

JUN 11 2003

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

CATHY A. CATTERSON
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

CHARLES LAVON JEFFERY, III,

Defendant - Appellant.

No. 02-30271

D.C. No. CR-02-00034-BLW

MEMORANDUM*

Appeal from the United States District Court
for the District of Idaho
B. Lynn Winmill, District Judge, Presiding

Submitted June 4, 2003**
Seattle, Washington

Before: B. FLETCHER, BRUNETTI, and McKEOWN, Circuit Judges.

Charles Lavon Jeffery III (“Jeffery”) appeals the district court’s denial of his motion to dismiss his two-count indictment for possession of a firearm in violation

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

** This panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

of 18 U.S.C. § 922(g). Jeffery claims that, under the Double Jeopardy Clause of the Fifth Amendment, the federal government is precluded from trying him because he was convicted and sentenced for the same conduct by the state of Idaho. It is well established, however, that “a federal prosecution is not barred by a prior state prosecution of the same person for the same acts.” Abbate v. United States, 359 U.S. 187, 194 (1959). Jeffery urges us to reconsider the double jeopardy standard in light of Justice Brennan’s concurring opinion in Abbate, but we have previously rejected such an invitation. See United States v. Snell, 592 F.2d 1083, 1085-86 (9th Cir. 1979). We also note that Jeffery’s argument that he will unfairly be committed to “successive” sentences is at odds with the record, which shows that his federal sentence is to run concurrently with his longer state sentence.

AFFIRMED.